

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
APR 23 2013

GARY PRUIETT, et al.,

APPEAL NO. C-130153
TRIAL NO. A-1209235

Appellees,

vs.

ENTRY GRANTING MOTION
TO DISMISS APPEAL

VILLAGE OF ELMWOOD PLACE,
et al.,

Appellants.



This cause came on to be considered upon the motion of the appellees to dismiss the appeal and upon the joint memorandum in opposition.

The Court finds that the motion is well taken and is granted, albeit for reasons different from those set forth in appellees' motion.

“When attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order.” *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, paragraph two of the syllabus. *See Icon Constr. Inc. v. Statman, Harris, Siegel & Eyrich, LLC*, 1st Dist. No. C-090458, 2010-Ohio-2457, ¶ 11-13. Where the trial court awards attorney fees but defers the determination of the amount of fees to be awarded, in the absence of a Civ.R. 54(B) certification the judgment is not a final appealable order. *RBS Citizen’s, N.A. v. Ryan*, 6th Dist. No. L-12-1136, 2013-Ohio-1269, ¶ 11-12;

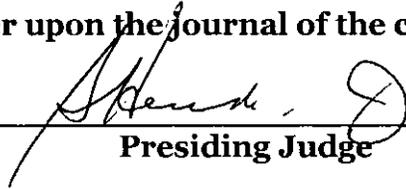
McMasters v. Kilbarger Constr., Inc., 5th Dist. No. 2012-CA-11, 2012-Ohio-4353, ¶ 18-19.

In their complaint, plaintiffs-appellees requested “[c]ourt costs, reasonable expenses incurred in maintaining this action, including reasonable attorney’s fees.” In its March 7, 2013 decision, the court stated that, “Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendants.” Because the trial court did not determine an amount to be awarded for attorney fees, costs and expenses, and it did not make an express determination pursuant to Civ.R. 54(B) that there is no just reason for delay, the court’s decision does not constitute a final, appealable order. Therefore, appellant’s appeal must be dismissed.

To the clerk:

Enter upon the journal of the court on APR 23 2013 per order of the court.

By: _____



Presiding Judge

(Copies sent to all counsel)